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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

M.O.,

Petitioner,

v.

THE SUPERIOR COURT OF
LOS ANGELES COUNTY,

Respondent;

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Real Party in Interest.

B214102

(Los Angeles County
Super. Ct. No. CK65116)

ORIGINAL PROCEEDINGS in mandate. Stephen Marpet, Commissioner.

Petition denied.

Law Office of Emma Castro, Ellen L. Bacon and Linda Simmons for Petitioner.

No appearance for Respondent.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County
Counsel and Melinda White-Svec, Deputy County Counsel for Real Party in Interest.

By petition for writ of mandate, mother M.O. challenges the juvenile court order terminating reunification services and setting a permanency planning hearing for her daughter, S.O. We deny the requested relief.

FACTUAL AND PROCEDURAL SUMMARY

In September 2006, the Department of Children and Family Services (DCFS) detained newborn S.O. after receiving a report from an individual at the hospital where mother gave birth. According to the detention report, while in the hospital after giving birth, mother expressed doubts about her ability to care for the child, and expressed concern that the child would be at risk because father would throw things around the house when he became angry. Mother had a history of psychiatric problems, and was a client at the Department of Mental Health's Edelman Center. DCFS filed a dependency petition pursuant to section 300 of the Welfare and Institutions Code¹ alleging that parents had numerous mental and emotional problems, and had engaged in domestic violence.²

The juvenile court ordered an Evidence Code section 730 evaluation for both parents. The evaluator, Dr. Michael Dishon, reviewed and summarized mother's psychiatric history, which included several suicide attempts and a long history of outpatient and inpatient psychiatric treatment and medication. After describing in detail the results of his testing and observations, Dr. Dishon expressed the view that there was a significant risk of emotional abuse, "not necessarily because of ill will, but rather due to the fact that the parents have their own personal and parental significant shortcomings." He was less concerned about the risk of physical abuse, but noted there were allegations of domestic violence, which the parents denied, but "the parents' reporting reliability"

¹ All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

² Father is not a party to this writ proceeding, and we limit our factual discussion accordingly.

was low. Dr. Dishon also expressed doubt about the ability of the parents to utilize services. He noted mother had “a history of several years of treatment for either Schizophrenia or a related diagnosis of Schizoaffective. In addition, she has been hospitalized several times for suicidal threats, with the latest hospitalization having occurred as recently as June 2006. At times, she has objected to the treatments that were recommended, refused medications, and at least on one occasion has left a hospital prematurely and against medical advice. She also has a history of switching treating doctors. These changes occur when she objects to aspects of the case management and treatment plan, resulting in no detectable pattern of stability in the therapeutic relationships. It is clear that she does better during periods when she is on antipsychotic medications, which is the case at present. But as discussed above, her level of functioning is still insufficient for ongoing parenting. Based on the above, I conclude that the prospects of near- or long-term improvements are slim. Even if she were to remain in a stable therapeutic relationship, the nature of her illness is such that she may not be able to improve much. Cooperation and compliance are likely to remain low due to paranoid features.”

Prior to adjudication, mother submitted a letter from her treating psychiatrist, who reported that mother did not appear to have symptoms of paranoid schizophrenia. He indicated mother’s medication had been decreased, and she appeared to be stable on medication. Mother also submitted confirmation of her enrollment in individual counseling, and proof of her completion of a parenting class.

On April 12, 2007, pursuant to an agreement, the section 300 petition was amended and sustained. Mother was ordered to participate in individual counseling to address case issues, and to continue with any prescribed medications. The court also ordered that all sustained petitions and 730 evaluations be provided to the service providers, and that DCFS approve all programs and therapists. Both parents were ordered to have monitored visitation with S.O.

In the report for the six-month status review hearing in May 2007, DCFS reported that mother’s psychiatrist had removed her from all medications due to side effects, and

that mother was functioning well without medication. Mother was seeing a psychologist for individual counseling, and had consistent visitation with S.O. Her treating psychologist submitted a declaration indicating his opinion that mother was originally misdiagnosed with paranoid schizophrenia. It was his opinion that her proper diagnosis was adjustment disorder with mixed anxiety and depression, and posttraumatic stress disorder.

The review hearing was continued numerous times, and ultimately proceeded as a 12-month review hearing in October 2007. At that time, the court ordered a new 730 evaluation of the parents. The evaluator, Dr. Timothy Collister, believed mother suffered from recurring bouts of significant depression and psychotic symptoms, perhaps caused by environmental and psychosocial stressors. It was his view that the “cycling of psychotic features may well continue into the future.” Dr. Collister saw no information suggesting that S.O. would be directly physically or emotionally abused by either parent, but “the possibility of indirect emotional abuse by the volatility and chaos in the home remains real, . . .” Dr. Collister had observed the parents interact with S.O., and recommended movement towards unmonitored visitation if, after four to eight family therapy sessions, the family therapist reported “more balanced, less overbearing interactions” with their daughter. He also recommended movement toward placing the child in the parents’ custody.

After receiving the 730 evaluation, the court ordered DCFS to review the evaluation and prepare a supplemental disposition plan with updated recommendations. On January 16, 2008, the court found that it was in the child’s best interest to allow the parents “6 full months of family reunification services in order to reunify with their child.”

The following month, a team decision meeting was held, during which the parties agreed parents could have unmonitored day visits. But by March, mother had left father’s residence and moved in with her parents. According to the March 12, 2008 interim report, mother told the social worker that father was physically and emotionally abusive to her, and she did not intend to return to him. In light of the parents’ continuing

physical and emotional altercations, the social worker did not believe it would be safe to return the child to the care of either parent. The social worker had discussed with mother the possibility of S.O. being adopted by mother's cousin, with whom S.O. was living. Mother agreed adoption would be the best plan.

The section 366.22 review hearing was set for July 2008. A report prepared for that date indicated mother was receiving weekly individual counseling, had completed a parenting course, and was enrolled in a domestic violence class for victims. Mother and S.O. appeared to enjoy the time spent together during mother's monitored day visits.

A few weeks before the report, the social worker had spoken with mother about adoption as a permanent plan for S.O. The mother initially said it was fine with her, since she "would be able to reverse the adoption." The social worker informed mother that adoption is not reversible. The subject was discussed again a week later. "Mother agreed that at this time she is not able to care for the minor, and she would accept the minor being adopted by her cousin [S.S.]. However since this dialogue with mother she has been vacillating between whether minor should be adopted by her cousin or whether the mother should reunify with minor when her condition improves."

After several continuances, the section 366.22 hearing commenced on January 23, 2009. The social worker's report for that hearing indicated that mother continued to have appropriate weekly monitored visits with S.O. According to the foster mother, "mother is still working on developing a closer relationship with the child who is not yet bonded to her. During visits, child is observed to cry with mother if care provider is seen leaving the room."

Mother submitted a letter from Dr. Rolando Espinoza, who began treating her in May 2008. When treatment began, mother "was very depressed, sad, crying spells, missing her young child, low self-esteem, unemployed." She had been consistent in her attendance, and was motivated to work through her problems, including traumatic memories from abuse inflicted by her child's father, and grief over S.O.'s removal at birth. Dr. Espinoza reported that mother had responded well to treatment, showing a

significant decrease in depression, improved self-esteem, and a clear interest in keeping and strengthening her bond with her daughter.

At the hearing, evidence established that mother had substantially complied with the case plan. Mother testified about what she had learned in her programs, about her improved self-esteem, her recent full-time employment, and her pending divorce from father. She testified that she saw Dr. Espinoza, twice a month, and was no longer on medication. She acknowledged feeling depressed around Christmas and her daughter's birthday, but denied having any psychotic episodes, panic attacks or hallucinations in the past year.

On cross-examination, mother admitted she had not told Dr. Espinoza about her past hospitalizations for mental illness, her history of mental illness, or that she had been evaluated for this case by two separate psychologists. The court then asked, "So he didn't know about your psychiatric background, did he? And he still doesn't know, does he?" Mother admitted that was correct. The court explained that doctors need to have a complete history and background in order to provide a proper diagnosis and assist a patient. Mother then asked, "How about if a person is dealing with it here and now, and they are still coming to grips with that understanding and shock?" The court emphasized that the doctor still needs to have a whole picture.

Mother's current social worker expressed concern over mother's ability to handle additional stress. Asked if he thought mother's visitation should be liberalized at this time, the social worker said he did not feel the child would be safe in her unmonitored care. "I think that she is making progress, and that is something that we can work together with her psychologist and work towards that, but overnight weekend visits, I will not support without doing smaller visits of unmonitored time with the child. She has not demonstrated that she could really handle the responsibility and the stress related to this child."

After hearing argument, the court concluded from the evaluations and the reports of visitation that although the parents had made progress and had complied with the case plan, returning the child to either of them would create a substantial risk of detriment to

her physical and emotional well-being. The court found reasonable reunification efforts had been made, terminated reunification services, and set a permanency planning hearing pursuant to section 366.26. Mother challenges this order.

DISCUSSION

I

Mother claims there was insufficient evidence to support the finding that DCFS provided reasonable reunification services. She made no such claim in the juvenile court, where any inadequacy could have been addressed in a timely manner. (See *In re Christina L.* (1992) 3 Cal.App.4th 404, 416.)

More importantly, the record shows that mother received 28 months of services, including individual counseling, domestic violence counseling, and parenting classes, and weekly monitored visitation. This is well beyond the six months of services required where a child is under the age of three when removed from the physical custody of his or her parent. (§ 361.5, subd. (a)(1)(B).)

Despite mother's good faith efforts and substantial progress during the 28 months of services, she still was only permitted monitored visitation and had not established a bond with the child. Mother had not provided information to her current therapist about her mental health history or the background of this dependency case. Thus, his evaluation of her condition, her progress, and her ability to safely parent her child was not fully informed.

Mother argues that DCFS failed to comply with the court's order to provide all section 730 evaluations and all reports to her service providers, and that its failure to do so meant reasonable efforts toward reunification had not been provided. Mother bases this claim on the testimony of Joe Eisenfeld, who was the social worker from September 2008 to the time of the hearing. Mr. Eisenfeld testified that in the four months he had been on this case, he had not sent mother's new therapist, Dr. Espinoza, any of mother's medical or mental health records, or any court reports or evaluations. He did not know

whether his predecessor, Juliet Fuller, had sent Dr. Espinoza any of the reports or mental health records.

Ms. Fuller, the social worker on the case from March 2007 to September 2008, testified at the January 2009 hearing. She was not asked what information or reports she supplied to mother's providers, but there are indications in the record that Ms. Fuller regularly gave the ordered information to mother's treating therapists and other providers. For example, an August 23, 2007 letter from Kamala White, a licensed marriage and family therapist who supervised individual treatment for mother and father, listed numerous documents she reviewed in formulating her opinions about the mental health and fitness of the parents. Included in this list were mother's mental health records, dependency court filings, DCFS reports, and the first section 730 evaluation by Dr. Dishon. Mother's psychiatrist, Dr. Arakel Davtian, submitted a declaration in September 2007 regarding mother's treatment. He stated that he had discussed her case with her social worker and reviewed her medical records from Edelman Clinic. These references suggest that Ms. Fuller complied with the court's order.

But even if DCFS failed to provide the records to mother's last therapist, a reasonable efforts finding was proper. Mother received individual, group, domestic violence and parenting services, and virtually all but the last provider had the benefit of her background information. This evidence supports the conclusion that DCFS provided reasonable services.

Mother relies on *Amanda H. v. Superior Court* (2008) 166 Cal.App.4th 1340, where the court found reasonable services had not been provided because the social worker gave mother incorrect information about whether she was enrolled in all court-ordered programs. In that case, mother was misled about her compliance until the very last moment, and then the social worker relied on her mistake to claim mother was not in compliance. (*Id.* at p. 1347.)

Our case involves no misinformation. At most, it involves the social worker's failure to fully communicate with mother's most recent therapist about her background. And, as was clear at the hearing, mother herself failed to provide any of that background

information, choosing instead to concentrate on the “here and now” Any gap in providing reports to mother’s therapist does not preclude the finding that DCFS provided reasonable services.

II

Mother also claims DCFS failed to provide referrals to complete the case plan. In his section 730 evaluation, Dr. Collister recommended that the parents enter “family treatment, essentially entering into directed play therapy” where they could be coached to improve their interactions with S.O. In response to this recommendation, on January 16, 2008, the court made a supplemental disposition order for six more months of services, including family therapy and play therapy.

But in early March, before this therapy had been arranged, mother left father and moved into her parents’ home. Ms. Fuller, the social worker at the time, spoke with mother as soon as she learned of this change, and mother indicated she did not anticipate going back to father, and intended to obtain a restraining order against him.

At this point, the possibility of returning the child to the care of both parents, which was part of Dr. Collister’s recommendation, was no longer available. Instead, Ms. Fuller contemplated whether the child could be placed with either parent. She concluded it would not be safe to place the child in the care of mother or father. She then discussed with mother the possibility of S.O. being adopted. According to the March 12, 2008 report, mother “agrees that she is not able to parent the minor at this time, and would agree that adoption would be the best plan for the child.” Given these circumstances, the social worker could reasonably conclude that the order for family therapy and play therapy was no longer relevant.

Mother later vacillated about having S.O. adopted by her foster mother, but at no point did she seek referrals for play therapy. By the time of the section 366.22 hearing, an entire year had elapsed since the supplemental disposition plan. Mother continued in individual counseling twice a month, and only recently stopped participating in a domestic violence program. She visited her daughter consistently one day each weekend,

but she did not seek additional or unmonitored visitation. The evidence supports the conclusion that mother received reunification services relevant to her circumstances.

III

Mother also argues there was no substantial evidence to support the conclusion that placing S.O. in her care would create a substantial risk to the child. At a section 366.22 hearing, a trial judge can consider, among other things, whether changing custody will be detrimental because severing a positive loving relationship with the foster family will cause serious, long-term emotional harm. (*Constance K. v. Superior Court* (1998) 61 Cal.App.4th 689, 704-705.) The court also may consider the fact that a child has not lived with a natural parent for long periods of time. (*Ibid.*) In this case, S.O. was detained just a few days after birth in September 2006; she never lived with her natural parents. She was placed in foster care in her maternal cousin's home in May 2007, and had lived there ever since. She was thriving in the foster mother's home, and sometimes cried during mother's visits if the foster mother left the room.

Mother still had some periods of depression, although in her testimony she minimized their significance. She also minimized the importance of her past history of serious mental illness, suggesting a lack of acceptance of the risks presented by her mental problems. In his evaluation of mother, Dr. Collister expressed concern about "environmental stressors" which could overload her ability to cope and cause severe depression, panic attacks, and psychotic features. At the time of the section 366.22 hearing, mother was working "overtime" and had just moved out of her parents' home to a rented room. She was still working hard to overcome the damage caused by father's domestic violence. She had never had S.O. in her care, not even for an overnight or unmonitored visit. These factors, considered with S.O.'s long and loving relationship in her foster home, support the court's conclusion that removing S.O. from her foster home to place her in mother's care would create a substantial risk of emotional detriment to the child.

DISPOSITION

The writ is denied.

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EPSTEIN, P. J.

We concur:

WILLHITE, J.

SUZUKAWA, J.